

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ROGER SAUL and  
ALMA SAUL,

Plaintiffs,

v.

No. 1:24-cv-00442-SCY

U.S. BANK NATIONAL ASSOCIATION,

Defendant.

**ORDER TO SHOW CAUSE<sup>1</sup>**

This case arises from Defendant’s alleged actions related to a foreclosure action in state court. *See Civil Complaint for Fraud*, Doc. 1, filed May 7, 2024 (“Complaint”). Plaintiffs allege “Defendant caused the Plaintiffs harm with false representations during its ‘re-prosecuting’ of a dismissed foreclosure case [2017]” and that “Plaintiffs relied on Defendant[’s] representations portending: ‘Default foreclosure judgment ...order for foreclosure sale.’” Complaint at 3 (emphasis in original).

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243

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<sup>1</sup> The Clerk’s Office assigned the undersigned to this case for review pursuant to 28 U.S.C. § 1915 which allows the Court to authorize commencement of a case without prepayment of the filing fee. *See Doc. 2*, filed May 7, 2024. Plaintiff has paid the filing fee. *See Doc. 3*, filed May 7, 2024. The undersigned has reviewed the Complaint pursuant to the Court’s inherent power to manage its docket. *See Securities and Exchange Comm’n v. Management Solutions, Inc.*, 824 Fed.Appx. 550, 553 (10th Cir. 2020) (“a district court has the inherent power ‘to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases’”) (quoting *Dietz v. Bouldin*, 136 S. Ct. 1885, 1891-92 (2016)).

F.3d 388 \*2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction *sua sponte*”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir.1988).

There is no properly alleged federal-question jurisdiction because the Complaint does not allege that this action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

“For a case to arise under federal law within the meaning of § 1331, the plaintiff's well-pleaded complaint must establish one of two things: either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law” . . . “The complaint must identify the statutory or constitutional provision under which the claim arises, and allege sufficient facts to show that the case is one arising under federal law.”

*Davison v. Grant Thornton LLP*, 582 Fed.Appx. 773, 775 (10th Cir. 2014) (quoting *Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1023 (10th Cir.2012) and *Martinez v. U.S. Olympic Committee*, 802 F.2d 1275, 1280 (10th Cir. 1986)). Plaintiffs state: “Jurisdiction in United States District Court is proper. Plaintiff attacks state court judgments, valid on its face, in a federal court, on the grounds of fraud as a basis for relief in Federal Courts.” Complaint at 2. Plaintiffs cite Rule 60(b) of the Federal Rules of Civil Procedure which provides for relief from judgments in United States District Courts on several grounds including fraud. *See* Fed. R. Civ.P. 60(b). Plaintiffs, however, cite no authority for the proposition that Rule 60(b) provides relief from a *state court* judgment as opposed to relief in a federal case. Simply put, Rule 60(b) is not a mechanism for relief from state court judgments.

Further, Plaintiffs' allegations do not satisfy the requirements for diversity jurisdiction. *See* Complaint at 1. To invoke diversity jurisdiction, “a party must show that complete diversity of citizenship exists between the adverse parties and that the amount in controversy exceeds \$75,000.” *Symes v. Harris*, 472 F.3d 754, 758 (10th Cir.2006). “Complete diversity is lacking

when any of the plaintiffs has the same residency as even a single defendant.” *Dutcher v. Matheson*, 733 F.3d 980, 987 (10th Cir. 2013). Plaintiffs have not alleged that there is complete diversity of citizenship between Plaintiffs and Defendant.

It appears the Court should dismiss this case because the Complaint does not show that the Court jurisdiction over this matter. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”).

The Court orders Plaintiffs to show cause why the Court should not dismiss this case for lack of jurisdiction. If Plaintiffs assert the Court should not dismiss this case, Plaintiffs must file an amended complaint.

## **Fraud**

The Complaint fails to state a claim for fraud.

The elements of fraud include (1) a misrepresentation of fact, (2) either knowledge of the falsity of the representation or recklessness on the part of the party making the misrepresentation, (3) intent to deceive and to induce reliance on the misrepresentation, and (4) detrimental reliance on the misrepresentation ... Our case law provides, in the general sense, that a plaintiff alleging fraud may recover “such damages as are the direct and natural consequences” of the reliance on a fraudulent representation.

*Williams v. Stewart*, 2005-NMCA-061 ¶ 34 137 N.M. 420, 429, 112 P.2d 290, 512. Federal Rule of Civil Procedure 9(b) states: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Rule 9’s purpose is “to afford defendant fair notice of plaintiff’s claims and the factual ground upon which [they] are based....” *United States ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1172 (10th Cir. 2010). “At a minimum, Rule 9(b) requires that a plaintiff set forth the ‘who, what, when, where and how’ of the alleged fraud, ... and must set forth the time [and date], place, and contents of the false representation, the identity of the party making the false statements and the consequences

thereof.” *United States ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726-727 (10th Cir. 2006). The Complaint alleges “Defendant caused the Plaintiffs harm with false representations” but does not identify each false representation, the contents of those false statements, the person making the false statements, the date they made the false statements or how Plaintiffs detrimentally relied on the false statements. Thus, the Complaint does not appear to satisfy Rule 9(b).

## **Case Management**

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court’s website: <http://www.nmd.uscourts.gov>.

## **Compliance with Rule 11**

The Court reminds Plaintiffs of their obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008) (“*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.”). Rule 11(b) provides:

**Representations to the Court.** By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiffs to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c).

**IT IS ORDERED** that Plaintiffs shall, within 21 days of entry of this Order: (i) show cause why the Court should not dismiss this case; and (ii) file an amended complaint. Failure to timely show cause and file an amended complaint may result in dismissal of this case.



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UNITED STATES MAGISTRATE JUDGE